

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 677**

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**Introduced by Assembly Member Solorio**

February 25, 2009

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An act to ~~amend Section 1720 of~~ *add Section 1720.5 to* the Labor Code, relating to public works.

### LEGISLATIVE COUNSEL'S DIGEST

AB 677, as amended, Solorio. Public works: prevailing wages.

Existing law defines “public works,” for purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds. *Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages be paid to workers employed on public works and imposes misdemeanor penalties for a violation of this requirement. Existing law provides that for the purposes of provisions of law relating to the payment of prevailing wages, “public works” includes specified types of construction, alteration, demolition, installation, and repair work.*

~~This bill would make technical, nonsubstantive changes in these provisions.~~

*This bill would revise the definition of “public works” for these purposes to include the construction, alteration, demolition, installation, and repair work done under private contract when specified conditions are met, including the requirement that the work is performed in connection with the construction or maintenance of renewable energy*

generation capacity specifically to serve a school district or community college district.

*Because the violation of prevailing wage requirements by local public entities when engaged in these public works projects would result in the imposition of misdemeanor penalties, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1720.5 is added to the Labor Code, to  
2     read:

3     1720.5. For the limited purposes of Article 2 (commencing  
4     with Section 1770), “public works” also means the construction,  
5     alteration, demolition, installation, and repair work done under  
6     private contract when all of the following conditions are met:

7     (a) The work is performed in connection with the construction  
8     or maintenance of renewable energy generation capacity  
9     specifically to serve a school district or community college district.

10    (b) The work is performed in connection with a long-term  
11    arrangement for the purchase of power by or for the benefit of the  
12    school district or community college district. For purposes of this  
13    section, a “long-term arrangement” means an arrangement that  
14    will last at least five years.

15    SEC. 2. No reimbursement is required by this act pursuant to  
16    Section 6 of Article XIII B of the California Constitution because  
17    the only costs that may be incurred by a local agency or school  
18    district will be incurred because this act creates a new crime or  
19    infraction, eliminates a crime or infraction, or changes the penalty  
20    for a crime or infraction, within the meaning of Section 17556 of  
21    the Government Code, or changes the definition of a crime within  
22    the meaning of Section 6 of Article XIII B of the California  
23    Constitution.

1     ~~SECTION 1. Section 1720 of the Labor Code is amended to~~  
2 ~~read:~~

3     ~~1720. (a) As used in this chapter, “public works” means:~~

4     ~~(1) Construction, alteration, demolition, installation, or repair~~  
5 ~~work done under contract and paid for wholly or partly out of~~  
6 ~~public funds, except work done directly by any public utility~~  
7 ~~company pursuant to order of the Public Utilities Commission or~~  
8 ~~other public authority. For purposes of this paragraph,~~  
9 ~~“construction” includes work performed during the design and~~  
10 ~~preconstruction phases of construction including, but not limited~~  
11 ~~to, inspection and land surveying work.~~

12     ~~(2) Work done for irrigation, utility, reclamation, and~~  
13 ~~improvement districts, and other districts of this type. “Public~~  
14 ~~work” does not include the operation of the irrigation or drainage~~  
15 ~~system of any irrigation or reclamation district, except as used in~~  
16 ~~Section 1778 relating to retaining wages.~~

17     ~~(3) Street, sewer, or other improvement work done under the~~  
18 ~~direction and supervision or by the authority of any officer or~~  
19 ~~public body of the state, or of any political subdivision or district~~  
20 ~~thereof, whether the political subdivision or district operates under~~  
21 ~~a freeholder’s charter or not.~~

22     ~~(4) The laying of carpet done under a building lease-maintenance~~  
23 ~~contract and paid for out of public funds.~~

24     ~~(5) The laying of carpet in a public building done under contract~~  
25 ~~and paid for in whole or in part out of public funds.~~

26     ~~(6) Public transportation demonstration projects authorized~~  
27 ~~pursuant to Section 143 of the Streets and Highways Code.~~

28     ~~(b) For purposes of this section, “wholly or partly out of public~~  
29 ~~funds” means all of the following:~~

30     ~~(1) The payment of money or the equivalent of money by the~~  
31 ~~state or political subdivision directly to or on behalf of the public~~  
32 ~~works contractor, subcontractor, or developer.~~

33     ~~(2) Performance of construction work by the state or political~~  
34 ~~subdivision in execution of the project.~~

35     ~~(3) Transfer by the state or political subdivision of an asset of~~  
36 ~~value for less than fair market price.~~

37     ~~(4) Fees, costs, rents, insurance or bond premiums, loans, interest~~  
38 ~~rates, or other obligations that would normally be required in the~~  
39 ~~execution of the contract, that are paid, reduced, charged at less~~

1 than fair market value, waived, or forgiven by the state or political  
2 subdivision.

3 ~~(5) Money loaned by the state or political subdivision that is to~~  
4 ~~be repaid on a contingent basis.~~

5 ~~(6) Credits that are applied by the state or political subdivision~~  
6 ~~against repayment obligations to the state or political subdivision.~~

7 ~~(c) Notwithstanding subdivision (b):~~

8 ~~(1) Private residential projects built on private property are not~~  
9 ~~subject to the requirements of this chapter unless the projects are~~  
10 ~~built pursuant to an agreement with a state agency, redevelopment~~  
11 ~~agency, or local public housing authority.~~

12 ~~(2) If the state or a political subdivision requires a private~~  
13 ~~developer to perform construction, alteration, demolition,~~  
14 ~~installation, or repair work on a public work of improvement as a~~  
15 ~~condition of regulatory approval of an otherwise private~~  
16 ~~development project, and the state or political subdivision~~  
17 ~~contributes no more money, or the equivalent of money, to the~~  
18 ~~overall project than is required to perform this public improvement~~  
19 ~~work, and the state or political subdivision maintains no proprietary~~  
20 ~~interest in the overall project, then only the public improvement~~  
21 ~~work shall thereby become subject to this chapter.~~

22 ~~(3) If the state or a political subdivision reimburses a private~~  
23 ~~developer for costs that would normally be borne by the public,~~  
24 ~~or provides directly or indirectly a public subsidy to a private~~  
25 ~~development project that is de minimis in the context of the project,~~  
26 ~~an otherwise private development project shall not thereby become~~  
27 ~~subject to the requirements of this chapter.~~

28 ~~(4) The construction or rehabilitation of affordable housing units~~  
29 ~~for low- or moderate-income persons pursuant to paragraph (5) or~~  
30 ~~(7) of subdivision (c) of Section 33334.2 of the Health and Safety~~  
31 ~~Code that are paid for solely with moneys from a Low and~~  
32 ~~Moderate Income Housing Fund established pursuant to Section~~  
33 ~~33334.3 of the Health and Safety Code or that are paid for by a~~  
34 ~~combination of private funds and funds available pursuant to~~  
35 ~~Section 33334.2 or 33334.3 of the Health and Safety Code do not~~  
36 ~~constitute a project that is paid for in whole or in part out of public~~  
37 ~~funds.~~

38 ~~(5) Unless otherwise required by a public funding program, the~~  
39 ~~construction or rehabilitation of privately owned residential projects~~

1 is not subject to the requirements of this chapter if one or more of  
2 the following conditions are met:

3 (A) The project is a self-help housing project in which no fewer  
4 than 500 hours of construction work associated with the homes  
5 are to be performed by the homebuyers.

6 (B) The project consists of rehabilitation or expansion work  
7 associated with a facility operated on a not-for-profit basis as  
8 temporary or transitional housing for homeless persons with a total  
9 project cost of less than twenty-five thousand dollars (\$25,000).

10 (C) Assistance is provided to a household as either mortgage  
11 assistance, downpayment assistance, or for the rehabilitation of a  
12 single-family home.

13 (D) The project consists of new construction, or expansion, or  
14 rehabilitation work associated with a facility developed by a  
15 nonprofit organization to be operated on a not-for-profit basis to  
16 provide emergency or transitional shelter and ancillary services  
17 and assistance to homeless adults and children. The nonprofit  
18 organization operating the project shall provide, at no profit, not  
19 less than 50 percent of the total project cost from nonpublic  
20 sources, excluding real property that is transferred or leased. Total  
21 project cost includes the value of donated labor, materials,  
22 architectural, and engineering services.

23 (E) The public participation in the project that would otherwise  
24 meet the criteria of subdivision (b) is public funding in the form  
25 of below-market interest rate loans for a project in which  
26 occupancy of at least 40 percent of the units is restricted for at  
27 least 20 years, by deed or regulatory agreement, to individuals or  
28 families earning no more than 80 percent of the area median  
29 income.

30 (d) Notwithstanding any provision of this section to the contrary,  
31 the following projects shall not, solely by reason of this section,  
32 be subject to the requirements of this chapter:

33 (1) Qualified residential rental projects, as defined by Section  
34 142 (d) of the Internal Revenue Code, financed in whole or in part  
35 through the issuance of bonds that receive allocation of a portion  
36 of the state ceiling pursuant to Chapter 11.8 (commencing with  
37 Section 8869.80) of Division 1 of Title 2 of the Government Code  
38 on or before December 31, 2003.

39 (2) Single-family residential projects financed in whole or in  
40 part through the issuance of qualified mortgage revenue bonds or

1 qualified veterans' mortgage bonds, as defined by Section 143 of  
2 the Internal Revenue Code, or with mortgage credit certificates  
3 under a Qualified Mortgage Credit Certificate Program, as defined  
4 by Section 25 of the Internal Revenue Code, that receive allocation  
5 of a portion of the state ceiling pursuant to Chapter 11.8  
6 (commencing with Section 8869.80) of Division 1 of Title 2 of  
7 the Government Code on or before December 31, 2003.

8 (3) ~~Low-income housing projects that are allocated federal or~~  
9 ~~state low-income housing tax credits pursuant to Section 42 of the~~  
10 ~~Internal Revenue Code, Chapter 3.6 (commencing with Section~~  
11 ~~50199.4) of Part 1 of Division 31 of the Health and Safety Code,~~  
12 ~~or Section 12206, 17058, or 23610.5 of the Revenue and Taxation~~  
13 ~~Code, on or before December 31, 2003.~~

14 (e) ~~If a statute, other than this section, or a regulation, other than~~  
15 ~~a regulation adopted pursuant to this section, or an ordinance or a~~  
16 ~~contract applies this chapter to a project, the exclusions set forth~~  
17 ~~in subdivision (d) do not apply to that project.~~

18 (f) ~~For purposes of this section, references to the Internal~~  
19 ~~Revenue Code mean the Internal Revenue Code of 1986, as~~  
20 ~~amended, and include the corresponding predecessor sections of~~  
21 ~~the Internal Revenue Code of 1954, as amended.~~

22 (g) ~~The amendments made to this section by either Chapter 938~~  
23 ~~of the Statutes of 2001 or the act adding this subdivision shall not~~  
24 ~~be construed to preempt local ordinances requiring the payment~~  
25 ~~of prevailing wages on housing projects.~~